IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

S.B. Civil Review Petition No.31/2006
in
S.B. Civil Misc. Appeal No.8/1996

National Thermal Power Corporation Ltd.
V/s
Khuman Singh

Date of Order : 20th September, 2006

HON'BLE MR. R.S. CHAUHAN, J.

Mr. M.D. Agarwal, for the petitioner.

By Court:

Having acquired the hearth and home, the land and the farm of the non-petitioner, the petitioner Corporation has filed this review petition against the judgment dated 25.04.2005 whereby this Court had enhanced the compensation payable to the non-petitioner from Rs.10,000/- per bigha to Rs.22,000/- per bigha.

The brief facts of the case are that in order to establish a Unit of National Thermal Power Corporation Ltd. (NTPC) (henceforth to be referred to as 'the petitioner Corporation', for short), at Anta in District Baran, the State Government had expressed its intention of acquiring the land of the farmers vide

notification dated 02.03.1989. According to the said notification published under Section 4 of the Land Acquisition Act, 1984 (henceforth to be referred to as 'the Act', for short), the non-petitioner's land situated in Khasra No.265 and Khasra No.266 comprising of eight bigha ten biswa were subject of acquisition. Eventually, vide award dated 9.10.1990, the non-petitioner was granted a compensation of Rs.1,28,298/-. According to the Land Acquisition Officer since the non-petitioner's land was shown in the revenue record as being unirregated, he was entitled to a compensation of only Rs.10,000/- per bigha. Since the non-petitioner was not satisfied with the amount of compensation, he had filed an application under Section 18 of the Act for reference to a civil court. Before the civil court, the non-petitioner claimed that he is entitled to a compensation of Rs.1,87,000/- @ Rs.22,000/- per bigha. Before the civil court, the Land Acquisition Officer had filed the reply and had justified the award ostensibly on the ground that the non-petitioner's land was shown as unirrigated land in the revenue record. According to the Land Acquisition Officer, those whose land was shown as irrigated, were granted the

compensation @ Rs.22,000/- per bigha. Since the non-petitioner's land was unirrigated, he as awarded compensation @ Rs.10,000/- per bigha. Vide order dated 03.08.1999, the Civil Judge dismissed the reference filed by the non-petitioner. Consequently, the non-petitioner filed an appeal before this Court. The said appeal was decided by this Court vide judgment dated 25.04.2005. According to the learned Judge, in the reference the non-petitioner had examined himself as a witness and two other witnesses via., Khwajoo Khan (A.W. 2) and Mangi Lal (A.W. 3), but the respondent did not produce any oral or documentary evidence. The learned Judge further held that the nature of the land, whether it is irrigated or unirrigated cannot be decided only on the basis of revenue record. Although the non-petitioner's land was shown as unirrigated in the revenue record, according to the testimonies of the independent witnesses, even prior to the notification under Section 4 of the Act, the non-petitioner had dug a well on his land. In fact, he was irrigating his field by utilizing the water from the said well. Hence, in reality the land was, indeed, irrigated. Considering the fact that other irrigated land in the vicinity of

the non-petitioner's land were compensated @ Rs.22,000/- per bigha, the learned Judge allowed the appeal and declared that the non-petitioner shall be entitled for compensation @ Rs.22,000/- per bigha.

The petitioner Corporation has filed the review petition ostensibly on the ground that the non-petitioner had intentionally shown his land as unirrigated in order to avoid the payment of land revenue. He could not be permitted to take advantage of his illegal act. Therefore, his land should be treated as “unirrigated land” by the court. And the court should have upheld the award passed by the Land Acquisition Officer. In order to support their contention, the petitioner has relied upon the case of Krishi Utpadan Mandi Samiti, Sahaswan V/s Bipin Kumar and Anr. (2004 AIR SCW 533).

We have heard the learned counsel for the appellant, Mr. M.D.Agarwal, and have perused the impugned order.

Needless to say that the jurisdiction of the

review is an extremely limited one. According to Order 47 Rule 1 of Civil Procedure Code (henceforth to be referred to as 'the Code', for short), the power of review is to be exercised only upon discovery of new and important matter or evidence, which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of record, or for any sufficient reason. The learned counsel for the appellant has not been able to bring his case within the contingencies mentioned above. His only argument is that the learned Judge has failed to take note of the case of Krishi Utpadan Mandi Samiti (supra). This Court is not even in a position to know whether the said case law was cited before the learned Judge or not. Even if, the said case was citied its non-consideration by the court would not give the petitioner the right to file a review petition before this Court. After all, precedents are not like statutory provisions, which need to be followed. For, each case is decided on the peculiar facts and circumstances of that particular case. Therefore, the non-consideration of a case law is

not a ground for review.

Moreover, the said case dealt with sale deed of comparable land where the Hon'ble Supreme Court held that the party cannot be permitted to lead evidence to show that the sale deed does not reflect the correct value of the property. In case, the party is permitted to do so, it would be placing a premium on dishonesty. Therefore, the Hon'ble Supreme Court has held the parties, who undervalue their documents, for the purpose of payment of the stamp duty, cannot be allowed to claim that their own document does not reflect the correct market value. However, in the present case, the document relied upon by the petitioner was the Revenue Record maintained by the Government. Hence, it was not a document of non-petitioner's creation. It is not uncommon for the Revenue Record to be disjointed from the reality at the grass root level. Thus, the contents of the Revenue Record cannot be taken as the gospel truth. They are a corroborative piece of evidence, which can be rebutted by a party. In the present case, both the independent witnesses i.e. A.W. 2 and A.W. 3 have testified before the reference court that, indeed,

the land of the non-petitioner had a well and the land was irrigated by the well. Thus, the leaned Judge was justified in treating the land as being irrigated in nature and has rightly awarded a compensation of Rs.22,000/- per bigha. For, other irrigated land in the vicinity were equally compensated @ Rs.22,000/- per bigha by the land Acquisition Officer. Hence, there is no error apparent on the face of record.

In the result, this review petition has no force. It is, hereby, dismissed.

(R.S. CHAUHAN), J.

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